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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/462,337	04/17/2000	Klaus-Peter Zeffler	2345/110	4964

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KENYON & KENYON
ONE BROADWAY
NEW YORK, NY 10004

EXAMINER

KIM, DAVID S

ART UNIT	PAPER NUMBER
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2613

DATE MAILED: 12/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/462,337

Applicant(s)

ZEFFLER ET AL.

Examiner

David S. Kim

Art Unit

2613

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 13 November 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

KENNETH VANDERPUYE
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments filed on 13 November 2006 have been fully considered, but they are not persuasive. Applicant's arguments, most recently filed on 13 November 2006, are largely the same as Applicant's arguments previously filed on 11 April 2006. However, these two sets of arguments differ in one significant way: the most recently filed arguments of 13 November 2006 omit the previously submitted point of Siperko and PCM networks found at the end of the first paragraph of p. 6 of the previously filed arguments of 11 April 2006.

Without this point of Siperko and PCM networks, the remainder of Applicant's arguments assert that (1) neither Siperko nor Widmer teach the invention of Applicant's claim 14 and that (2) Siperko is not properly combinable with Widmer since there is no proper motivation shown to combine features of the two references in either reference.

Regarding (1), Examiner respectfully notes that the standing rejection already recognizes that neither Siperko nor Widmer *alone* teaches the invention of Applicant's claim 14. Accordingly, the standing rejection presented an obviousness argument that relies on the combination of Siperko and Widmer. Notice that Applicant's arguments do not address the merits of the combined teachings of Siperko in view of Widmer, as presented in the standing Final Rejection (mailed on 07 July 2006). Accordingly, Applicant's assertion that neither Siperko nor Widmer teach the invention of Applicant's claim 14 is not persuasive.

Regarding (2), Examiner also respectfully notes that a proper motivation was presented in the standing rejection:

"Widmer's method teaches a way to provide extra information that is necessary for important transmission functions in PCM networks, such as synchronization ([Widmer,] col. 1, l. 9-24), which may be necessary in the method of Siperko[, which employs a PCM network (Siperko, p. 38, Table V)]" (mailed on 07 July 2006, p. 4, last full paragraph).

Notice that Applicant's arguments do not address the merits of this motivation. Accordingly, Applicant's assertion that there is no proper motivation shown to combine features of the two references is not persuasive.

Summarily, Applicant's arguments are not persuasive. Accordingly, Examiner respectfully maintains the standing rejections.